

CHAPTER 487

Control of Marine Pollution and Aquatic Growth

New Hampshire Clean Lakes Program

§ 487:15 Purpose. – The general court recognizes that rapidly escalating pressures of shorefront development and recreational uses of public waters have placed increasing strains upon the state's lake resources, thereby accelerating the eutrophication process in many of our public lakes through nuisance growths of aquatic macrophyton and phytoplankton (algae) and thus posing a threat to water quality. The general court further recognizes the need to restore, preserve and maintain the state's lakes and ponds in order that these significant environmental, aesthetic and recreational assets will continue to benefit the social and economic well-being of the state's citizens.

Source. 1990, 143:2, eff. June 18, 1990.

§ 487:16 Definitions. – In this subdivision:

I. "Department" means the department of environmental services.

II. The term "exotic aquatic weeds" includes only those species of vascular aquatic plants which were not part of New Hampshire's native aquatic flora before 1950. *Cabomba caroliniana* and *Myriophyllum heterophyllum* are examples of exotic aquatic weeds.

III. "Federal program" means the federal Water Pollution Control Act, 33 U.S.C.A. 1324, the federal clean lakes program (P.L. 92-500, section 314), as amended, now known as the Water Quality Act of 1987 (P.L. 100-4), as amended.

IV. "Commissioner" means the commissioner of the department of environmental services.

Source. 1990, 143:2, eff. June 18, 1990. 1996, 228:98, 99, eff. July 1, 1996. 1997, 185:2, eff. Jan. 1, 1998.

§ 487:16-a Exotic Aquatic Weed Prohibition. – No exotic aquatic weeds shall be offered for sale, distributed, sold, imported, purchased, propagated, transported, or introduced in the state. The commissioner may exempt any exotic aquatic weed from any of the prohibitions of this section consistent with the purpose of this subdivision.

Source. 1997, 185:3, eff. Jan. 1, 1998.

§ 487:16-b Exotic Aquatic Weed Penalties. –It shall be unlawful to knowingly, recklessly, or purposely offer for sale, distribute, sell, import, purchase, propagate, or introduce exotic aquatic weeds into New Hampshire waterbodies. Notwithstanding RSA 487:7, any person engaging in such an activity shall be guilty of a violation.

Source. 1999, 204:3, eff. Jan. 1, 2000.

§ 487:17 Program Established. – I. A program for the preservation and restoration of New Hampshire lakes and ponds eligible under RSA 487:20 shall be established and administered within the department of environmental services. Said program shall function to limit the eutrophication process in New Hampshire lakes by reducing nuisance growths of macrophyton and phytoplankton. It shall reinforce and complement the program authorized by the federal program and shall serve 3 basic purposes:

- (a) To diagnose degraded lakes and ponds and implement long-term solutions for the purpose of restoring water quality where such solutions are feasible and cost effective.
- (b) To diagnose lakes and ponds and implement methods for long-term preservation of the water quality when such measures can be shown to be feasible and cost effective.
- (c) To provide short-term remedial actions which can effectively maintain water quality conditions adequate for public recreation and enjoyment, including, but not limited to, the control of exotic aquatic weeds pursuant to paragraphs II and III.

II. The department is directed to prevent the introduction and further dispersal of exotic aquatic weeds and to manage or eradicate exotic aquatic weed infestations in the surface waters of the state. The department is authorized to:

- (a) Display and distribute promotional material and engage in educational efforts informing boaters of the problems with exotic aquatic weed control.
- (b) Eradicate small new infestations of exotic aquatic weeds, according to the following criteria:
 - (1) The waterbody had been free, within the previous 5 years, of the exotic aquatic weed to be treated.
 - (2) The infestation is not widespread in the waterbody, and the department shall have determined that the exotic aquatic weed can in fact be eradicated from the waterbody.
 - (3) The most environmentally sound treatment technique relative to the specific infestation will be used, which also meets the requirements of state rules, including rules adopted under RSA 430.

- (c) Develop an emergency response protocol to eradicate small new infestations. The protocol may include contractual agreements with one or more licensed pesticide applicators that would enable the prompt treatment of exotic aquatic weeds with herbicides consistent with the criteria provided in subparagraph (b).

- (d) Designate, in consultation with the department of fish and game and the division of safety services, department of safety, restricted use of exotic aquatic weed control areas.

III. After notice and opportunity for hearing and comment, the department may make financial grants to lakefront associations, private businesses, citizens, and local governmental agencies for the management of exotic aquatic weeds where eradication is deemed impossible. All applications for grants by such groups shall be approved by both the department and the fish and game department, and shall meet state rule requirements.

Source. 1990, 143:2, eff. June 18, 1990. 1996, 228:100, 106, eff. July 1, 1996. 1997, 185:4, eff. Jan. 1, 1998.

§ 487:18 Project Prioritization. – Project approval shall be based upon prioritization factors to be established by rules adopted under RSA 541-A. Such rules shall give first priority for expenditure of available funds to the eradication of new infestations of exotic aquatic weeds pursuant to RSA 487:17, II(b) and second priority to all reasonable measures to control exotic aquatic weeds. Otherwise, preference shall be given to lakes that have public access or that serve as a public drinking water supply. Implementation measures shall be based upon an assessment of potential success, technical feasibility, practicability, and cost effectiveness. Restoration and preservation projects shall include watershed management plans to control and reduce incoming nutrients wherever possible through best management practices. Repeated short-term solutions shall be discouraged where long-term solutions are feasible and cost effective. Treatments shall be designed to minimize any adverse effect upon fish and wildlife, their habitats, and the environment.

Source. 1990, 143:2, eff. June 18, 1990.

§ 487:19 Public Hearings. – No project for the implementation of a lakes restoration or preservation program shall be approved or initiated until at least 2 public hearings have been held on the project. Said hearings shall be held in one or more of the affected municipalities.

Source. 1990, 143:3, eff. June 18, 1990.

§ 487:20 Eligibility. – To be eligible for funding under this subdivision, a body of water shall be any freshwater lake or pond which meets priorities established under RSA 487:18. Lakefront associations, private businesses, citizens and local government agencies shall be eligible to apply for funding under this subdivision.

Source. 1990, 143:3, eff. June 18, 1990.

§ 487:21 Cost Sharing. – I. For diagnostic and feasibility studies where the federal government has made financial assistance available in the amount of 70 percent of the cost, the department may provide an amount not exceeding 30 percent of the total eligible costs as determined by the department. Where no federal funding is available, the department may provide an amount not exceeding 80 percent of the total eligible costs.

II. For implementation of restoration or preservation projects where the federal government has made financial assistance available in the amount of 50 percent of the costs, the department may provide an amount not exceeding 35 percent of the total eligible costs, as determined by the department. Where no federal funding is available, the department may provide an amount not exceeding 80 percent of the total eligible costs.

III. For water quality maintenance programs, the department may provide an amount of funding not to exceed 80 percent of the total eligible costs, as determined by the department, except that for the eradication of new infestations of exotic aquatic weeds the state may assume 100 percent of the cost.

IV. The local cost share shall be the cost of a project remaining after taking into account any state and federal funding.

V. An amount up to 10 percent of the total available funding may be expended on research that addresses the problems of lake eutrophication and exotic aquatic weeds.

Source. 1990, 143:3, eff. June 18, 1990. 1996, 228:106, eff. July 1, 1996.

§ 487:22 Municipal Agreements. – Whenever a project requires a commitment of cooperative action or local cost sharing involving 2 or more municipalities, all participating municipalities shall execute an intermunicipal agreement relative to their respective obligations. No project which requires a local match shall be initiated with state funding until such an agreement, if applicable, has been approved by the legislative bodies of all the involved municipalities.

Source. 1990, 143:3, eff. June 18, 1990.

§ 487:23 Agency Cooperation. – The department shall make a concerted effort to integrate and coordinate the clean lakes program with other environmental management programs involving lakes and their watersheds, whether such programs fall within the jurisdiction of the department of environmental services or within that of another state department. The university system and the department shall maintain regular communication for the purpose of sharing data bases and other relevant information.

Source. 1990, 143:3, eff. June 18, 1990. 1996, 228:101, eff. July 1, 1996.

§ 487:24 Rulemaking. – The commissioner shall adopt rules, under RSA 541-A, relative to:

I. The criteria to be used in the prioritization of grants for diagnostic or feasibility studies.

II. The criteria used to determine the priority of implementation projects and maintenance projects.

III. Contracting procedures with local governments or private businesses.

IV. Application procedures to participate in the program.

V. Criteria for the determination of project eligibility.

VI. Criteria governing the conduct of and reporting requirements on diagnostic and feasibility studies, implementation projects and maintenance projects.

VII. Designation of plants as exotic aquatic weeds as defined in RSA 487:16, II.

VII-a. Administration and enforcement of, and exemptions to, the exotic aquatic weed prohibition under RSA 487:16-a.

VII-b. Criteria governing the emergency response protocol under RSA 487:17, II(c).

VII-c. Designation of restricted use exotic aquatic weed control areas under RSA 487:17, II(d).

VIII. Any other matters that are necessary to implement the provisions of this subdivision.

Source. 1990, 143:3, eff. June 18, 1990. 1997, 185:5, eff. Jan. 1, 1998.

§ 487:25 Lake Restoration and Preservation Fund; Addition to Boat Fee. – I. An additional fee of \$2 to those already collected under the provisions of RSA 270-E:5 for each private boat registered shall be paid to the director of the division of motor vehicles. The director of the division of motor vehicles shall pay over said additional fees to the state treasurer who shall keep said fees in a special fund to be expended by the department of environmental services. The department shall use \$.50 of the fee for lake restoration and preservation measures, exclusive of exotic aquatic weed control, and \$1.50 of the fee for the control of exotic aquatic weeds. The special fund shall be nonlapsing. All funds received under this section are continually appropriated to the department for the purposes of this subdivision.

II. The department is authorized to utilize such methods of control and to employ such personnel, consultant services, and equipment as, in its judgment, will control aquatic nuisances in the surface waters of the state as defined in RSA 485-A:2.

III. The department shall be the agency to receive and utilize federal funds, gifts, or grants from any person or association, which may be made available for the purposes of this subdivision.

Source. 1990, 143:3, eff. June 18, 1990. 1996, 228:102, 106, eff. July 1, 1996. 1997, 185:6, eff. Jan. 1, 1998.